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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/449,237	11/24/1999	JAMES PRESCOTT CURRY	23091/9001	6035

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EXAMINER

EDELMAN, BRADLEY E

ART UNIT PAPER NUMBER

2153

DATE MAILED: 10/08/2002

16

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/449,237

Applicant(s)

CURRY, JAMES PRESCOTT

Examiner

Bradley Edelman

Art Unit

2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 81-93 and 95-97 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 81-93 and 95-97 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This action is in response to Applicant's request for reconsideration and amendment filed on July 29, 2002. Claims 81-93 and 95-97 are presented for further examination. Claim 94 has been cancelled.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 81 and 93 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker et al. (U.S. Patent No. 5,678,041, hereinafter "Baker").

In considering claim 81, Baker discloses a method of providing services through a publicly accessible distributed network (100) to authorized users using authorized portals (107-109), comprising:

providing an online site that enables databases to be accessed from at least one of multiple portals (col. 4, lines 18-35);

placing at least one of the multiple portals to the online site in communication with the on-line site through the publicly accessible distributed network (col. 4, lines 18-35), wherein the network includes the internet, and wherein at least one of the computers can access the site through the Internet (col. 3, lines 12-15);

receiving a request at the online site requesting access to the databases (col. 4, lines 17-19);

processing the request to determine which portal the request came from (col. 4, lines 9-12, 17-19, "ID107, ID108, ID109," "identity of the requesting user terminal"), and whether the request was received from an authorized user (col. 4, lines 24-30, "user clearances 107-109"); and

responding to the request based on which portal the request came from and whether the request was received from an authorized user (col. 4, lines 17-30).

However, Baker does not expressly disclose using the online system for wellness services at a fitness center, wherein one of the multiple computers is a computer residing at the fitness center and is thus sponsored by the fitness center. Nonetheless, the claim limitations that the database is a wellness-related database, and that one of the computers may be at a fitness center, and thus would be sponsored by the fitness center, are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. It would make no difference if one of the computers were at a school or business (as disclosed by Baker – col. 1, lines 46-55), a health center, a neighbor's house, a library, or any other location, or if the data was wellness-related, financial-related, or adult-material-related. The terminal ID determination and the authorization steps would be performed the same regardless of the type of information being accessed or the location of the requesting computer. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of

patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include any type of information and to place one of the terminals at any location in the system taught by Baker, because access to any type of personal or explicit information should be restricted to prevent tampering or unauthorized access. The subjective type of information and location does not functionally relate to the steps in the method claimed, and thus does not patentably distinguish the claimed invention.

Claim 93 contains no further limitations over claim 81, except that a different level of services are provided to the user based at least in part on the results of determining which portal the request came from. Nonetheless, this feature is taught in col. 4, lines 9-30 of Baker ("unlimited access, restricted use . . ."). Although Baker does not disclose that the sponsored portal is located in a health or fitness center, that claim limitation does not functionally relate to the steps in the method claimed, and thus does not patentably distinguish the claimed invention, as discussed above.

2. Claims 82-92 and 95-97 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker, in view of Szabo (U.S. Patent No. 5,954,640).

In considering claim 82, although the system taught by Baker discloses substantial features of the claimed invention, it fails to disclose obtaining data from the

user through one of the portals, and then providing the user with access to the data through the other terminal. However, these features are well known for online sites, and particularly for wellness-related sites, as evidenced by Szabo. In a similar art, Szabo discloses a system for accessing an online wellness-related site, wherein users can enter information into the site to be stored at a database, and wherein the user can later retrieve that data from one of many computers (including a sponsored kiosk). See col. 6, lines 5-9; col. 3, lines 56-61. Thus, given the teaching of Szabo, a person having ordinary skill in the art would have readily recognized the desirability and advantages of allowing users to input data, as taught by Szabo, into the information access system taught by Baker, to allow greater interactivity among users, thus providing greater opportunity for market growth of the online site. Therefore, it would have been obvious to allow inputting data into the system, as taught by Szabo, in the system taught by Baker. In addition, both Szabo and Baker teach that multiple computers can be used to retrieve data (see Baker, Fig. 1) and/or to input data (see Szabo, col. 4, lines 16-23).

In considering claim 83, Szabo further discloses automatically assigning the user to a control group based on user attributes (col. 9, line 66 – col. 10, line 9; "the models themselves may be adaptive based on the experiences of individual users or groups . . . neural network technology and other adaptive paradigms may be employed to dynamically improve the models through use and feedback.").

In considering claim 84, Szabo further discloses providing fitness advice and goals to the group, wherein the advice and goals are at least in part a result of the group result data (col. 10, lines 1-34).

Claim 85 contains no further functional limitations over claims 81 and 82 combined and is rejected for the same reasons as stated above. Although the amendment to claim 85 has added that authorized users are able to enter fitness-related data "selected from the group consisting of workout plans, workout goals, weight training plans, weight training weights and weight training repetitions," this information is again non-functional, descriptive material that does not add to the functional operation of the claimed invention. The entered data could have been any data (i.e. business plan data, school-related program data, etc.) and the invention would still perform the same function – that is, allowing data to be entered at one portal in the system, and allowing retrieval and viewing of the data at a different portal.

In considering claim 86, Baker discloses a method of providing services to an authorized user through a distributed communications network, comprising:

identifying a portal with a portal identifier (ID107, ID108, ID109), and storing the portal identifier in a database (col. 4, lines 20-22);

receiving a request from the portal by an online site, and processing the request at a controller to determine whether the request was from the portal (col. 4, lines 1-16);
and

assigning an access code to the user (clearance 107, clearance 108, clearance 109), the access code defining a level of services available to the user, and then providing services to the user through the distributed network that correspond to the user's access code (col. 4, lines 25-32).

However, Baker fails to disclose the use of the access system for wellness-related information and services, and Baker further fails to disclose providing at least one control group, wherein each control group includes at least one authorized user, and assigning the user to one of the control groups, wherein the assigning is done automatically based on user attributes. Nonetheless, the use of user authorization routines for wellness related sites is well known, as evidenced by Szabo. In a similar art, Szabo discloses a wellness-related site that provides wellness-related access and services to users, wherein the users must identify themselves before gaining access to the data (col. 13, lines 43-47, 55-57, "safeguards are also placed to prevent unauthorized intrusion into an individual's personal information records"). Thus, it would have been obvious to a person having ordinary skill in the art to use the safeguards taught by Baker for a wellness-related site, such as taught by Szabo, because users would not want others to know their personal medical and health information.

Szabo further discloses providing at least one control group, wherein each control group includes at least one authorized user, and assigning the user to one of the control groups, wherein the assigning is done automatically based on user attributes (col. 9, line 66 – col. 10, line 9; wherein a neural network may be employed to dynamically update the group information through the use of a feedback loop).

In considering claim 87, Szabo further discloses providing information or goods to the user based upon the control group to which the user has been assigned (col. 9, line 66 – col. 10, line 9).

In considering claims 90 and 96, Szabo further discloses that each control group includes group result data, the method further comprising providing the result data to the portal, storing the result data to the group result data for the authorized user's control group, and adjusting the user improvement plan for each user in the authorized user's control group based on the stored group result data (col. 10, lines 1-34).

In considering claim 95, Szabo further discloses creating practical guidelines and advice for the control group, including a user improvement plan selected to be related to the guidelines and advice (col. 10, lines 1-34).

In considering claim 97, Szabo further discloses storing result data for the authorized user, and assigning the user to a new control group based on the stored result data for the user (col. 10, lines 14-34).

3. Claims 88, 89, 91, and 92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker, in view of Szabo, and further in view of Roth (U.S. Patent No. 5,890,997).

In considering claim 88, Szabo further discloses creating practical guidelines and advice for the control group, including a user improvement plan selected to be related to the guidelines and advice (col. 10, lines 1-34).

However, Szabo does not disclose that the guidelines are workout guidelines and the advice is workout advice. Nonetheless, the use of workout data to create practical guidelines and advice for groups of users is well known, as evidenced by Roth. In a similar art, Roth teaches a computerized fitness management system for multiple users at a health club which includes a database storing wellness-related information for each user (cols. 28-30), wherein workout data is used to create practical guidelines and advice for groups of users in the system, and wherein such data can be used to update workout routines and other wellness-related advice in the system (col. 3, lines 47-52, 59-63; col. 4, lines 3-10). Thus, given the teaching of Roth, a person having ordinary skill in the art would have readily recognized the desirability and advantages of allowing updating of the data in the combined teaching of Baker and Szabo based on workout data and results, as taught by Roth, so that medication and other advice can be altered in response to the current state of a user's health. Therefore, it would have been obvious to change the guidelines and advice in the system taught by Baker and Szabo according to workout results, as taught by Roth.

In considering claim 89, Szabo further discloses that the improvement plan is at least in part based on the collective attributes of the control group (col. 10, lines 1-34). Again, in view of the workout updating features taught by Roth, as discussed above, it

would have been obvious to a person having ordinary skill in the art to base a user improvement plan on collective group workout data, so that group advice and information can be based on the current state of the collective users' health.

In considering claim 91, Szabo further discloses checking if the user improvement plan for users in the control group needs to be adjusted (col. 12, lines 45-52). Thus, although an "alarm" is not expressly disclosed, Examiner takes official notice that alarms are notoriously well known in the computer art as a means for reminding or warning users of particular events. Therefore, it would have been obvious to a person having ordinary skill in the art to provide an alarm signal to the system administrator if adjustments are needed, to make a human aware of potentially harmful drug interactions or other health risks.

In considering claim 92, Szabo further discloses storing result data for the authorized user, and assigning the user to a new control group based on the stored result data for the user (col. 10, lines 14-34).

Response to Arguments

In response to applicant's request for reconsideration filed on July 29, 2002, the following arguments are noted:

- a. Examiner has given the sponsorship of the sponsored portal no weight, and Examiner has read all of the business method limitations out of claims 81 and other claims of the presently recited invention.
- b. Baker does not disclose methods for providing wellness-related services from an online site to both sponsored portals sponsored by and located at a fitness center and nonsponsored portals, where responding to information requests depends on whether the portal was sponsored.
- c. Neither Baker nor Szabo disclose a method for providing wellness-related services including allowing authorized users to enter fitness-related data selected from the group consisting of workout plans, workout goals, weight training plans, weight training weights and weight training repetitions at a fitness center and to view the fitness data from the nonsponsored portals, as recited in claim 85.
- d. Szabo does not disclose assigning users to groups automatically based on user attributes, as claimed in claim 86.

In considering (a), Applicant contends that Examiner has given the sponsorship of the sponsored portal no weight, and Examiner has read all of the business method limitations out of claims 81 and other claims of the presently recited invention. Examiner respectfully disagrees.

Examiner has not ignored either the sponsorship or the business method aspects of the invention. The Baker reference relied on is intended for use in a system including sponsored and non-sponsored computers, as discussed in the background section of

the patent. The reference describes two separate systems that include sponsored and non-sponsored portals: 1) A school that sponsors portals allowing access to certain resources, and 2) Businesses that would like to allow their employees to access only work-related resources (col. 1, lines 46-55). Thus, the terminals described in column 4 of the Baker system that allow different levels of access to databases would either be part of a sponsored system, such as a school or business, or would be non-sponsored, and thus not part of the school or business system. Thus, both the sponsorship aspects and the business method aspects of Applicants claimed invention are disclosed in the Baker reference.

In considering (b), Applicant contends that Baker does not disclose methods for providing wellness-related services from an online site to both sponsored portals sponsored by and located at a fitness center and nonsponsored portals, where responding to information requests depends on whether the portal was sponsored. Examiner agrees that Baker does not disclose that the sponsored portals are located at a fitness center and that the services are wellness-related. However, as stated in the rejections above, these limitations are non-functional and are merely descriptive, and thus do not distinguish the claimed invention from the prior art in terms of patentability. Regarding functionality of the claimed invention, it makes no difference if the portals are placed in a health center, school, or business, and it makes no difference whether the data is wellness-related, educational, or business-oriented. The invention will still

perform the same steps and functions, all of which are disclosed by Baker described in the rejections above.

In considering (c), Applicant contends that neither Baker nor Szabo disclose a method for providing wellness-related services including allowing authorized users to enter fitness-related data selected from the group consisting of workout plans, workout goals, weight training plans, weight training weights and weight training repetitions at a fitness center and to view the fitness data from the nonsponsored portals, as recited in claim 85. Examiner agrees. However, again, the descriptive, non-functional nature of the data included in the claimed system does not render the system patentable, for the reasons stated in (b) above.

In considering (d), Applicant contends that Szabo does not disclose assigning users to groups automatically based on user attributes, as claimed in amended claim 86. Examiner respectfully disagrees. Column 10, lines 1-9 state, "the models themselves may be adaptive based on the experiences of individual users or groups . . . neural network technology and other adaptive paradigms may be employed to dynamically improve the models through use and feedback." Thus, Szabo discloses automatically basing models based user attributes, and applying these models when forming groups.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradley Edelman whose telephone number is (703) 306-3041. The examiner can normally be reached on Monday to Friday from 8:30 AM to 5:00 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on (703) 305-4792. The fax phone numbers for the organization where this application or proceeding is assigned are as follows:

Art Unit: 2153

For all After Final papers: (703) 746-7238.

For all other correspondences: (703) 746-7239.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-3900.



GLENTON B. BURGESS
SUPERVISORY PATENT EXAMINER
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BE
October 3, 2002